

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
IN AND FOR THE STATE OF UTAH

IN THE MATTER OF THE REQUEST FOR)
HEARING IN REGARDS TO THE) DOCKET NO. 95-025
FIVE-YEAR PERMIT RENEWAL, CO-OP)
MINING COMPANY, BEAR CANYON MINE,)
ACT/015/025, EMERY COUNTY, UTAH.) CAUSE NO. ACT/015/025
_____))
_____)

WEDNESDAY, JANUARY 24, 1996, COMMENCING AT THE HOUR OF
10:00 A.M., A HEARING WAS HELD IN THE ABOVE MATTER BEFORE
THE BOARD OF OIL, GAS AND MINING, 355 WEST NORTH TEMPLE, 3
TRIAD CENTER, SUITE 520, SALT LAKE CITY, UTAH 84180-1203.

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REPORTED BY:
DANA MORSE, CSR, RPR

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APPEARANCES

CHAIRMAN: DAVE LAURISKI

BOARD MEMBERS: RAYMOND MURRAY
ELISE L. ERLER
JAY CHRISTENSEN
KENT STRINGHAM
JUDY LEVER
THOMAS FADDIES

STAFF MEMBERS:

VICTORIA A. BAILEY, Secretary to the Board
TONI HELDMAN, Records Librarian
THOMAS A. MITCHELL, Assistant Attorney General
PATRICK J. O'HARA, Assistant Attorney General
JAMES W. CARTER, Director, Division of Oil, Gas and Mining
RONALD J. FIRTH, Associate Director of Oil and Gas,
Division of Oil, Gas and Mining
LOWELL P. BRAXTON, Associate Director of Mining,
Division of Oil, Gas and Mining
FRANK R. MATTHEWS, Petroleum Engineer
BRAD G. HILL, Geologist
RON DANIELS, Coordinator of Minerals Research

APPEARANCES:

FOR CASTLE VALLEY
SPECIAL SERVICE
DISTRICT:

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Collard, Appel and Warlaumont
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FOR NORTH EMERY WATER
USERS ASSOCIATION:

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FOR CO-OP MINING
COMPANY:

F. MARK HANSEN
624 North 300 West, Suite 200
Salt Lake City, Utah 84103

1 SLC, UTAH, WEDNESDAY, JANUARY 24, 1996, 11:05 A.M.

2 P R O C E E D I N G S

3 MR. LAURISKI: Okay. If we could, please, we'll go
4 back on the record. Gentlemen and ladies, please.
5 Thank you. This brings us to our agenda item number
6 five in Docket No. 95-025, Cause No. ACT/015/025 in the
7 matter of request for hearing in regards to the
8 five-year permit renewal, Co-Op Mining Company, Bear
9 Canyon Mine, ACT/015/025, Emery County, Utah.

10 We're here to consider a request from interested
11 parties for a hearing regarding approval of the renewal
12 permit, so if counsel would identify themselves for the
13 record, please.

14 MR. APPEL: Jeff Appel on behalf of Castle Valley
15 Special Service District.

16 MR. SMITH: Craig Smith on behalf of North Emery
17 Water Users Association and Huntington Cleveland
18 Irrigation Company.

19 MR. MITCHELL: Tom Mitchell on behalf of the
20 Division of Oil, Gas and Mining.

21 MR. HANSEN: Mark Hansen on behalf of Co-Op Mining
22 Company.

23 MR. LAURISKI: Thank you. Mr. Appel.

24 MR. APPEL: Thank you very much. Good morning.
25 Didn't expect to see you all so soon but here we are

1 again. This is simply a procedural request to the
2 Board. We won't be calling any witnesses. Simple
3 reason for that is we never reached the substance at the
4 Division level of the renewal process. Thumbnail sketch
5 of what occurred is the Division failed to follow its
6 own rules and denied our participation in an informal
7 conference that we timely requested. The result is that
8 we were denied the ability to participate as allowed by
9 the rules and the statute before the Division. Ensuing
10 dates, I believe, is as follows: June 19, 1995 the
11 permit renewal was submitted by Co-Op. On October 12,
12 1995 the water users, Mr. Smith's and my clients filed a
13 timely objection and a request for informal conference.
14 On October 19, 1995 the DOGM granted the request for an
15 informal conference and set a hearing for November 8,
16 1995.

17 All of this, we believe, was timely. On October 31,
18 1995 the water users requested a 90 day postponement and
19 extension. That was granted on November 1, 1995 and we
20 began our review process. We had recently been denied
21 actually, somewhat after that November 4th or 5th we
22 were denied access to the mine by Co-Op. We wanted to
23 go in and begin our work and review. We were denied
24 access by Co-Op on the basis of filing this particular
25 project. Nonetheless --

1 MR. LAURISKI: Mr. Appel, before you go on, just so
2 I'm clear, you say on November 1, 1995 the request was
3 granted by the Division for postponement?

4 MR. APPEL: A 90 day postponement, yes. I'm glad
5 you noticed that date because on November 2nd the
6 renewal was granted and part of what it says in the
7 findings of the Division is that we failed to establish
8 our case. Our view is that we were certainly entitled
9 to our informal conference and also entitled to rely
10 upon the extension time.

11 So we're here to ask you one of several things. We
12 don't believe that we were given a full, fair statutory
13 opportunity to prepare and present our legal and factual
14 basis. Quoting our objection, the governing statute
15 40-10-132 says: The Division shall hold a conference
16 within a reasonable time.

17 As I understand the Division's view of this, they
18 are guided by the 120 day period set forth in the rules
19 which we can get to a little later on. I think it's the
20 interpretation of that rule by the Division that causes
21 a problem. The 120 day period set forth at 645, Rule
22 645-300-131.112 -- these numbers are difficult -- says
23 the permit renewal period for application review will
24 not exceed 120 days. We believe that 131.112 needs to
25 be reviewed there. That provides time will be counted

1 as cumulative days of the Division review and will not
2 include operator response time or time delays attributed
3 to informal or formal conferences or Board hearings.

4 The other important portion of that statute -- or, I'm
5 sorry, rule is that they have to render a decision
6 within 60 days of the close of the conference.

7 Now we filed, as I mentioned, our request, timely
8 request for the informal conference on October 12,
9 1995. At that point in time I believe that the 120 day
10 period for Division application review is tolled. I
11 suppose there's an argument that on October 19th when
12 the DOGM granted that request, that's another date you
13 could look to, but I believe we requested that is time
14 delays attributed to informal or formal conferences or
15 Board hearings, so we believe that was tolled at this
16 point in time and that the Division was acting in
17 violation of their rules by approving this on November
18 2nd.

19 Then there's the rather important issue, more
20 important, I suppose, that we were denied our informal
21 conference which they certainly can't tell us we can
22 have something on November 8th knowing all the way that
23 the applicable time is going to expire on November 2nd
24 and then again tell us one day before it's expired that
25 we could have an extension for 90 days and suggest that

1 we have not presented a case. So in a nutshell I guess
2 that's it. There are a couple things I think that the
3 Board could do, three to be specific. You could rule
4 with the Division, in which case we could seek further
5 review. I hope you will not do that in these particular
6 circumstances.

7 The second is that you can remand for the informal
8 conference. In my view, we'd have a minimum of the 21
9 days plus the 90 day extension to pull this together.
10 What we believe we need to do, and this gets into my
11 third approach to this, we need some adequate
12 discovery. We need to gather samples from the mine.
13 Rather than coming at this piecemeal, as we have in the
14 past, I think it would benefit all parties both
15 expense-wise and time-wise to simply get to the bottom
16 of the factual basis concerning this mine and the water
17 users down there. Remand the rule. As you know,
18 renewals are not the best way to approach this
19 particular problem. The burdens of proof are
20 different. Of course, if the Board orders us to do
21 that, we'll find a way to get it done within the time
22 frames that I've suggested.

23 The Board has the ability to order discovery. You
24 have different rules. You also have inherent statutory
25 flexibility basically -- I'll put it in my own plain

1 talk -- to do what's right to get something done under
2 your own statutory provisions. I think you can remand
3 this with instructions and drape the Board's
4 jurisdiction over the process allowing for discovery and
5 with giving some direction as to how this can occur.

6 I haven't spoken at length with Mr. Mitchell or Mr.
7 -- I haven't spoken at all with Mr. O'Hara about this
8 and I have not spoken with Mr. Hansen but it might be --
9 if you're interested in that approach, it might be
10 something where we could make another presentation to
11 you at the next Board meeting and come up with
12 something.

13 I think that's the way to finally get these facts
14 out and get this over once and for all. I would hope
15 that Co-Op would have an interest in approaching it that
16 way rather than continuing to be worried about it or
17 looking over their shoulder toward us. We certainly
18 would like to have that done. If the facts show if all
19 of our experts can demonstrate that there's no
20 interference with our water rights, then I believe that
21 we're done unless something changes.

22 However, if we can convince the Board and the
23 experts show that there is a problem with this, then
24 there are tools within your statutory authority and
25 statutory authority of the district that can give us

1 some relief, and that's what we'd hope to accomplish
2 this way. Right now Co-Op is mining based upon the
3 renewal. I've spoke with my clients, and I believe
4 Mr. Smith has spoken with his, and it's fine with us if
5 they continue to mine, so this would essentially be an
6 approach where we think all parties can win and we can
7 end this thing. Craig?

8 MR. SMITH: I'd just like to add a couple comments
9 briefly. Mr. Appel has covered the issue. We find
10 ourselves, I think, in a very difficult situation
11 procedurally and not because of our own making but
12 because of what we think is an error by the Division.

13 We haven't had our informal conference and we think
14 it's important to try to resolve these issues at the
15 lowest level possible. That's why the rules are set up
16 the way they are, to allow an informal conference to
17 allow information to be gathered and decisions to be
18 made to have that participation at that level.

19 I think it's patently unfair to deny the water users
20 the opportunity to have their concerns aired at the
21 Division directly to see if things could be changed in
22 the Division or to protect the water that's there.
23 Mr. Appel went through the schedule. We were granted a
24 90 day continuance. The reason we asked for a
25 continuance was to gather information. We were granted

1 that on November 1st and then this thing was approved on
2 November 2nd. We just haven't had our day before the
3 Division. We'd ask we could be remanded there.

4 As Mr. Appel has mentioned, there's a couple of ways
5 that maybe that could be done in a method that would
6 save time and money for everyone which is the -- to
7 remand and yet maybe have this Board retain jurisdiction
8 to have a discovery take place but to have it remanded
9 so the Division, as in the role of a hearing officer,
10 could review this issue and -- before it comes before
11 this Board.

12 We just shouldn't be here yet. That's basically our
13 bottom line. We should be able to have our concerns
14 aired and our facts presented to the Division on this
15 issue. Thank you.

16 MR. LAURISKI: One question relative to the request
17 for an informal conference, and I notice that in your
18 pleadings you talk about the 30 days for Board -- you
19 know, following the decision of the Division to issue
20 the notice to request the Board hearing. What is the
21 time constraints for -- between the time that the
22 publication or the notice of publication for renewal
23 comes about until you have to request an informal
24 conference? I don't see that in here. Is it 30 days,
25 as well?

1 MR. APPEL: I -- is that with respect to whether we
2 timely filed our request?

3 MR. LAURISKI: Yes. I'm asking what the time frames
4 are for that.

5 MR. SMITH: I believe it's 30 days from the last
6 date of publication.

7 MR. LAURISKI: From the last date of publication.

8 MR. SMITH: And this one was actually published
9 twice, as I recall, because there was an error in the
10 first publication. I don't know if I have that with me,
11 but I certainly could provide for the Board the evidence
12 that we timely appealed this. I don't think that's been
13 a question but, you know, if it is, we can certainly
14 clear that up quickly.

15 MR. APPEL: I don't believe there was any issue
16 raised with respect to timeliness of the objection.

17 MR. LAURISKI: No. I'm just curious to try to put
18 the time lines together as to what those time elements
19 are. And I'm understanding that the first four notices
20 in four consecutive weeks was on August the 29th, so we
21 had four consecutive weeks beyond that of notice that
22 probably takes us near the middle to latter part of
23 September and your request for informal conference is on
24 the 12th of October.

25 MR. SMITH: That's right.

1 MR. LAURISKI: I'm just trying to put the next date
2 in here.

3 MR. MITCHELL: Mr. Chairman, the rule on permit
4 renewal refers you back to 645 -- 645-300-121.100 which
5 is under Coal Mine Permit Administrative Procedures and
6 it provides that comments and objections on permit
7 applications within 30 days of the last newspaper
8 publication, written comments or objections to an
9 application for a permit, significant revision to a
10 permit or renewal of a permit tying it all together may
11 be submitted to the Division by public entities notified
12 with respect to operation proposed coal mining. Read on
13 further, that also is what applies to any person which
14 may have an affected interest, 23.100.

15 MS. LEVER: Doesn't give days.

16 MR. MITCHELL: Yes. It's the same as 121.100, 30
17 days from the last newspaper publication written
18 comments or objections and then with regard to that the
19 informal conference at 123, any person having an
20 interest which may be adversely affected must, when they
21 request it, briefly summarize the issues to be raised,
22 where they want it to be held, and be filed with the
23 Division no later than 30 days after the last
24 publication in the newspaper advertisement. So it's 30
25 days from the last date of publication.

1 MS. LEVER: What is it, four weeks from
2 publication?

3 MR. MITCHELL: Four weeks or 30 days. In other
4 words, what they may not --

5 MS. LEVER: Do they have to publish four weeks from
6 --

7 MR. MITCHELL: I believe so. Let me verify that for
8 you. Place an advertisement in a local newspaper
9 general circulation and locality of the proposed coal
10 mine or reclamation at least once a week for four
11 consecutive weeks. A copy of that advertisement as it
12 will appear in the newspaper will be submitted to the
13 Division and that advertisement contains certain
14 information, which I don't think is in dispute. That's
15 121.100.

16 MR. LAURISKI: Mr. Mitchell?

17 MR. MITCHELL: I'm going to wait and give Mr. Hansen
18 an opportunity to go first.

19 MR. LAURISKI: Okay. Thank you.

20 MR. HANSEN: I don't know if I should thank
21 Mr. Mitchell for that or not. Mr. Chairman, members of
22 the Board, as far as on the timing on what has
23 transpired here, I see two dates that are most
24 significant. The first date is June 19, 1995 when Co-Op
25 submitted its application for permit renewal.

1 MR. LAURISKI: Is that June -- excuse me, June 19th
2 or June 16th?

3 MR. HANSEN: I'm taking this information from the
4 petitioner's objection to the Board. If it was the
5 16th, I would stand corrected. Their date here, I
6 think, is June 19th and I was using that date. The
7 second date is November 2, 1995 which was something over
8 120 days following the application for permit renewal.

9 The November 2nd date is important because that is
10 the date that Co-Op mine's permit was due to expire.
11 The Division was obligated no later than November 2nd of
12 1995 to rule on the application for renewal. At the end
13 of that date the Division would either have approved the
14 permit allowing Co-Op mine to continue mining or denied
15 the permit which would shut down mining altogether or
16 rule on it which would result in an expiration that also
17 resulted in Co-Op mine being shut down.

18 So that November 2nd date is important. All of the
19 other dates deal with actions taken by the petitioners.
20 If you look at the time line as they have stated, their
21 objections were in timely. They could have filed their
22 objections sooner and conducted discovery, put on their
23 evidence, have their informal conference, have all their
24 information before the Board before that November 2,
25 1995 deadline. They failed to do that. Their objection

1 was untimely. It was their burden to put on their case,
2 to present their evidence. If they failed to get it in
3 before November 2nd, the Division really had no
4 effective choice but to grant the petition for renewal
5 based on the information it had before it at that time.

6 MR. LAURISKI: Mr. Hansen, on what basis do you say
7 that the petitioner's request was untimely?

8 MR. HANSEN: By simple examination of the time line,
9 sir. If they filed their initial objection on October
10 12th, if they needed to conduct discovery before they
11 could put on their evidence, there was simply no time
12 between October 12th and November 22nd to conduct any
13 discovery that they would need to put on their evidence.

14 MR. LAURISKI: Well, the reason I ask the question
15 about the amount of time that you have between the last
16 publication and the request for a hearing, as I
17 understand from Mr. Mitchell quoting the section, we
18 have 30 days. So, by our calculations, if you have four
19 weeks of publication, we assume that that would have
20 expired somewhere around the 19th of September. Your
21 first publication was on the 29th of August. So by our
22 calculations, the four consecutive weeks takes you to
23 the 19th of September, so 30 days beyond that would take
24 you to the 18th of October and their request is based on
25 -- was requested on October 12th, within the 30 day

1 time line. My question then goes back as to what basis
2 are we saying that the petitioner's request was
3 untimely?

4 MR. HANSEN: The only thing I can respond to there
5 is regardless of all the other dates, there had to be a
6 ruling based on evidence submitted to the Division by
7 November the 2nd. Substantively, I heard Mr. Appel say
8 that we desire a opportunity to finally lay to rest, to
9 come to some clear conclusion as to whether or not there
10 is any interference on subsequent grounds.

11 With all respect, it is my understanding that we
12 have already clearly established that very point in
13 Co-Op's mine application for a significant permit
14 renewal to admit mining the tank seam. The primary
15 issue raised and the primary objection raised by the
16 petitioners in this matter was whether or not mining a
17 tank seam would have any highly logical impact on the
18 Big Bear Spring and Birch Spring and Co-Op mine rather
19 than the petitioners had the burden of proof on that
20 point to establish there would be no interference.

21 Co-Op mine established that by evidence of two
22 separate factors. The first was that there was no water
23 in any significant amounts encountered or expected to be
24 encountered in the tank seam itself, but second and more
25 importantly for today's purposes, Co-Op mine put on

1 evidence that the entire permit area was hydrologically
2 isolated from Big Bear Spring and Birch Spring. And the
3 findings of fact and conclusions of the law reached by
4 the Board in its June 13, 1995 order agreed with Co-Op's
5 evidence on the point, found that the permit area was
6 indeed hydrologically isolated from those two springs
7 and that was one of the factors in the Board's decision
8 that mining the tank seam would not have an adverse
9 hydrological impact on those two springs.

10 MR. LAURISKI: Mr. Hansen, I'm going to stop you for
11 a second. I think the only matter currently before us
12 is a procedural question as to whether or not the
13 petitioners were due an informal conference without
14 getting into the substance of the permit renewal itself.

15 MR. HANSEN: I agree. The reason I make that point
16 is because the only persons that are allowed to raise
17 these kind of objections are persons who have interests
18 that may be adversely affected and to the extent the
19 petitioners are relying on a claim that they will be
20 adversely affected by the underground mining impacts on
21 the area's hydrology by virtue of the court's previous
22 order, these individuals are not persons whose interests
23 may be adversely affected.

24 MR. LAURISKI: And I think that that comes, you
25 know, once the Board makes a decision on the procedural

1 motion as to whether or not the petitioners were given
2 due process under the rule. If it's determined that
3 they were, this matter then becomes before the Board.
4 And that's one of the arguments, obviously, that we're
5 going to have considered, but at this point what we're
6 dealing with is whether or not this matter should be
7 remanded back to the Division to conduct an informal
8 conference and do discovery, and I don't think we've
9 reached a point of any issues regarding collateral
10 estoppel or the substance of their complaint.

11 MR. HANSEN: The issue here is whether the
12 petitioners here even have standing to raise an
13 objection.

14 MR. LAURISKI: It's not an issue. As I see it, it
15 is purely a matter of them requesting to go back before
16 the Division as to whether or not they've had an
17 opportunity to do that under the existing rules. I
18 don't think that they've -- and you correct me if I'm
19 wrong, Mr. Smith and Mr. Appel, if they've asked
20 anything beyond asking this Board to remand this matter
21 back to the Division so they can conduct an informal
22 conference on your request on Co-Op's request for the
23 rule of a five year -- on a five year permit.

24 Beyond that, I don't know that the Board is willing
25 at this point to consider any of the substantive issues

1 that the petitioners may raise regarding Co-Op's request
2 for the permit. Counsel, you correct me if I'm getting
3 out of line here.

4 MR. O'HARA: I will or I'll try.

5 MR. HANSEN: Mr. Chairman, I certainly don't intend
6 to debate the legalities of the point. I don't intend
7 to get into the evidentiary substance on the issues. I
8 was merely attempting to find out that based on the
9 Board's prior ruling that these persons are not persons
10 who have standing to even make the objection to begin
11 with. If they don't have any right to make the
12 objection, they don't have any right to an informal
13 conference to begin with, they don't have a right to an
14 appeal in this matter if they are not persons whose
15 interests may be adversely affected. And I believe that
16 the Board's prior ruling establishes that, at least to
17 the extent that their proceedings at this point deal
18 with the hydrological impacts of the underground mining.

19 MS. LEVER: May I ask Mr. Hansen a question?

20 MR. LAURISKI: Sure.

21 MR. HANSEN: Thank you.

22 MS. LEVER: Mr. Hansen, I'd like to ask you a
23 question. If you take from the proposition coming from
24 that you've filed for an application, an objection, and
25 let's make the assumption it was a timely filed

1 objection, wouldn't you expect that to give efficacy to
2 the opportunity for an objection to be heard and to have
3 discovery that there ought to be time allowed to do
4 that?

5 MR. HANSEN: I believe that there should be time
6 allowed to do that. The difficulty is, as I've stated,
7 --

8 MS. LEVER: Don't jump to the earlier thing. I mean
9 without jumping --

10 MR. HANSEN: As a general proposition, some of the
11 -- with the valid objection bears the burden of proof
12 should have the opportunity to present the evidence to
13 meet that. I would agree that is a general proposition,
14 yes.

15 MS. LEVER: Wouldn't you generally -- would you
16 agree with a general concept that, generally speaking,
17 things would be held in abeyance when that kind of an
18 issue arises?

19 MR. HANSEN: I'm not aware that the expiration of
20 the permit would be held in abeyance under the rules.

21 MS. LEVER: Well, if you were filing a lawsuit, if
22 you didn't get an injunction, it would hold things,
23 right? I mean things would generally be held and if you
24 wanted to stop something from happening, you would have
25 to get injunctive relief.

1 MR. HANSEN: I believe we're dealing with a
2 completely different set of issues relating to statutes
3 of limitations and so on. I'm not --

4 MS. LEVER: Do you disagree with the proposition
5 that was set forward that the filing of the objection in
6 a timely manner would toll the situation, it would toll
7 the time for your -- in other words, your permit
8 wouldn't expire because it -- in essence, the time
9 running factor of the clock had been tolled, stopped?

10 MR. HANSEN: I am not aware of any authority for
11 that proposition.

12 MS. LEVER: Okay. Thank you.

13 MR. LAURISKI: Anything further for Mr. Hansen?
14 Thank you. Mr. Mitchell?

15 MR. MITCHELL: On behalf of the Division, the
16 analysis of what's in front of the Board begins with
17 645-303-230 permit renewals, 231 which says: A valid
18 permit issued pursuant to the state program will carry
19 with it the right of success of renewal within the
20 approved boundary of the existing permit upon expiration
21 of the term of the permit.

22 And I don't think there's any dispute that in the
23 first instance in a mining company which has a valid
24 permit has a right of renewal unless something happens.
25 The right of renewal is exercised upon the filing of an

1 application for renewal at least 120 days before the
2 expiration of the existing permit term which means that
3 once that 128 day -- 120 day period has been triggered
4 by that application, the Division must do one of two
5 things: It must either renew the permit or not renew
6 the permit.

7 The law is also clear that a mining company that
8 doesn't have a permit may under no condition engage in
9 mining. There is -- search SMCRA through indefinitely
10 but you will not find such a thing as a conditional
11 permit. You will either have a permit or you don't have
12 a permit. It's been renewed or it hasn't been renewed.
13 It's either been issued or it hasn't been issued.

14 Now the mining company's right is clear. It can
15 only be denied if there is within that 120 day period a
16 basis for the Division to make a factual finding of a
17 number of things. It says the Division will, not may
18 but will approve a complete and accurate application
19 permit renewal unless it finds in writing the terms and
20 conditions of the existing permit have not been
21 satisfactorily met or that the present coal mine and
22 reclamation operations are not in compliance with the
23 environmental protection of the state program or that
24 the requested renewal substantially jeopardizes the
25 operator's continuing ability to comply with the state

1 program on existing permit areas or -- and I could read
2 them all, but it requires the Division to make a finding
3 and be able to establish by carrying the burden, the
4 preponderance of evidence that such is the case. Mere
5 allegation is not a basis for shutting down a mine when
6 they have a right to a permit renewal.

7 Now was the objection timely? Yes, it was timely in
8 the sense that it had to be considered. What was in
9 front of the Division on November 2nd, the day on which
10 neither had to stop mining at the site because it was in
11 position to make written findings or renew it because it
12 had no basis in the record to not renew it. What was in
13 front of it was a document signed by counsel for the
14 water users that said -- and this is Exhibit C to the
15 water users objection to permit renewal. Their joint
16 request for postponement is that they're not pulling or
17 adequately prepared for the informal conference. They
18 must, among other things, undertake a thorough review of
19 the DOGM file, the documents produced by Co-Op, the
20 prior documents and factual background from Co-Op and
21 their experts through discovery and retain experts for
22 their own purpose.

23 In other words, as for the time when the Division's
24 got to make a decision, they have signed the document as
25 attorneys for these parties saying we aren't prepared to

1 write any basis at all for any allegations. Now whether
2 or not the 120 day rule is a good rule or a wise rule is
3 really irrelevant to what you have to decide today. You
4 have to decide is it the rule? If it is the rule, then
5 was there a basis in front of the Division on November
6 2nd for not issuing -- for not renewing the permit.

7 Now the argument, of course, is that apparently I've
8 been told that this joint request for postponement of
9 informal conference was signed in November of 1995 by
10 the director. And I think that can be interpreted only
11 one way. Because the director has no authority to
12 change the substantive rights of the mining company,
13 because the director has no ability to allow an operator
14 to operate without a permit, the most this provides is
15 an opportunity for there to be a hearing, an informal
16 conference considering their allegations at some point
17 in the future. This doesn't say there will be one in 90
18 days. It says at a minimum of 90 days, at some unknown
19 date these people would like to come back in front of
20 the Division and have an informal conference.

21 In the Board book there is a December 11th letter to
22 Jeff Appel, counsel for the water users, signed by
23 Mr. Carter which says if what you want is an opportunity
24 to come back in front of the Board, put it in front of
25 it at the time you're ready to put information in front

1 of the Division that you think there's something wrong;
2 the Division will be glad to have that at any time. And
3 if there's a basis in front of us to do something, we
4 have the ability to do something about it, but that's
5 separate and apart from permit renewal.

6 The ability to protect the interests of these water
7 users is not foreclosed by following the lawfully
8 promulgated rules in this case concerning when a permit
9 will be renewed. You've got to balance both the rights
10 here. So the final issue is are these people, these
11 water users substantially prejudiced, and this goes in
12 front of the Supreme Court. That's what the Supreme
13 Court is going to have to decide is whether they've been
14 substantially prejudiced.

15 And I would submit that they have not. If what they
16 want is an opportunity to put evidence in front of the
17 Board at a time they're ready to put in front of the
18 Board and the Division and then the Board, there's no
19 dispute. They can do that. If the issue is can they
20 hold up the permit from being renewed, no, they can't do
21 that. But there's no basis for saying that they've been
22 in any way prejudiced by doing that. They've said to
23 you already today they have no problem with the mine
24 continuing to be in operation. So I don't see that
25 there's any relief that needs to be provided these

1 people that the Division hasn't already agreed to offer
2 them which is to give them an opportunity to hear their
3 evidence at any time in the future as their evidence may
4 develop and to take steps under the program to modify
5 the permit or take enforcement action, if there's a
6 basis for doing so, with an opportunity to appeal to
7 this Board based upon that evidentiary record at some
8 point in the future when they're prepared to do that.

9 That, however, is immaterial concerning the absolute
10 right and the absence if on November 2nd there being a
11 basis in the record for denying the permit renewal and
12 shutting down that mine. We would submit it on that.

13 MR. LAURISKI: One question that I have,
14 Mr. Mitchell. In the time lines was that following the
15 request for an informal conference the Division sent a
16 letter back stating that the conference would be held on
17 November 8th, yet the question I have is: Didn't the
18 Division recognize that that was outside the 120 day
19 time line for the petitioners to ask for?

20 MR. MITCHELL: I don't know what -- I can't read the
21 Division's mind.

22 MR. LAURISKI: This -- we're talking six days.
23 Well, you're representing the Division.

24 MR. MITCHELL: Right. But I guess my point is what
25 the Division is thinking is in some ways irrelevant in

1 the sense of what was in the record. In other words,
2 the Division could be confused, a lot of things could be
3 the case, but it would not effect the substantive rights
4 of a mining company, their confusion would not effect
5 the substantive rights of the mining company to that
6 permit renewal if these people are not substantially
7 prejudiced by it.

8 And that's my entire point is that they've already
9 told you that prior to the November 2nd date they
10 weren't ready to go ahead with any hearing at any
11 particular time that they could identify so whether it
12 was held -- whether it would have been held on November
13 8th was really immaterial. They weren't ready to go. I
14 mean I -- there's no question it's unfortunate that
15 there's a document that says there's going to be an
16 informal conference on the 8th, but my point is it had
17 -- it really had no effect in this case.

18 MR. LAURISKI: Well, I go back to the December 11th
19 letter and in the last sentence of that on the first
20 page it says: In this instance, although an objection
21 to renewal was timely filed, no such showing was made on
22 or before November 2nd. Yet the Division had granted a
23 conference for November 8th. How could the Division
24 make a determination if no showing had been given if, in
25 fact, the petitioners hadn't been given an opportunity

1 to present their case?

2 MR. MITCHELL: Well, if they've told the Division --
3 they told the Division prior to November 2nd that
4 whether they have a hearing on November 8th or not,
5 they're not ready to go for a hearing, they have no
6 evidence at this time.

7 MR. LAURISKI: I understand that, Mr. Mitchell, but
8 the Division's letter responding to the request for
9 conference was sent on October 19th, not November 2nd,
10 before, before petitioners had requested a continuation
11 for a hearing for a minimum of 90 days.

12 MR. MITCHELL: But that's not the facts of this
13 case. In this case the situation wasn't that the
14 parties on November 2nd thought they were having a
15 hearing on November 8th and they went ahead and renewed
16 it. That would create complications. I don't even want
17 to get into that because, unfortunately, we weren't
18 there. We've got our own set of facts that are
19 confusing enough. I'm simply saying you've got to
20 balance two parties' rights and the Division took
21 actions.

22 Now, in reviewing those Division's actions,
23 somebody's not going to be happy but whose material
24 substantive rights are interfered with based on what you
25 can do? And I'm saying if you acknowledge that these

1 people have a right to have their permit renewed in 120
2 days and keep their mine operating and that these people
3 have a right to come back in front of the Division and
4 have the Division order the permit to be reviewed or
5 modified at any time they have actual evidence as
6 opposed to allegations, then these people are not
7 substan -- these people are not substantively prejudiced
8 by that.

9 On the other hand, if you did something that takes
10 away their right to mine through no fault of the mining
11 companies, you're interfering with a substantive right
12 to renewal on a 120 days on the absence of that evidence
13 having been put on.

14 Now the Division's record is not as clean as we
15 would like it to be. It's confusing, but in terms of
16 the actual impact, in terms of the actual application of
17 the law to these two parties, I think you have to come
18 to the conclusion that these people are not prejudiced
19 by that and that the mining company would have been
20 prejudiced had the Division done something other than
21 renew that permit on November 2nd.

22 MS. LEVER: I am concerned a little bit from the
23 fact that -- I'm a lot, concerned a lot that the
24 argument is made as, well, they told us we want it so we
25 didn't think they had their stuff so we set a date out

1 here. There's no evidence -- I guess it's taking it
2 from a conceptual matter. Are you saying that unless
3 there had been a factual determination by the Board --
4 or by the Division prior to the 2nd that even though
5 there -- let's say there had been an informal conference
6 held on the 30th of October and that the result of that
7 is that allegations were raised and the opportunity to
8 discovery had been set apart and an order had entered
9 out from the Division with a discovery line, you know,
10 something going forward.

11 MR. MITCHELL: You're assuming the Division could
12 have ordered this discovery in this informed period. I
13 mean what's not clear to me is that the same -- that
14 there's authority for the Division to order discovery
15 that the Board might under the Board's only procedural
16 rules. You look in the program and in terms of
17 objections to permit renewal you don't see anything
18 about particular options for discovery. There are
19 public documents that have been on file for the entire
20 history of this permit. We know as of -- you can take
21 judicial notice giving multi-day hearings concerning
22 these issues that these people are aware of what's in
23 the Division's files.

24 MS. LEVER: So you're saying had they filed a --
25 requested an informal conference, they filed a petition

1 for hearing before the adjustment -- excuse me, before
2 us challenging the renewal of the permit that, in your
3 mind, would that have tolled it?

4 MR. MITCHELL: Yeah, I think that would have tolled
5 it because it would have then been on appeal.

6 MS. LEVER: But at that point it was just a notice.
7 It has only been a notice of intent to grant an
8 application for renewal because the Division would not
9 have yet granted.

10 MR. MITCHELL: Well, I'm sorry, say your facts
11 again.

12 MS. LEVER: Okay. Let's say they have a time line
13 that an application for renewal is filed, the notice is
14 given and that within the required time, within the 30
15 days an objection to issuing the renewal is
16 appropriately and timely filed but are you -- but are
17 you saying the only thing that can toll that is by
18 actually filing a petition for review with us?

19 MR. MITCHELL: Well, let me put it this way. You're
20 still looking at the Division -- say there would have
21 been a hearing at some point before the permit was
22 renewed, okay, prior to the 2nd there had been an
23 informal conference and there had been a record
24 established. The Division then would have done one of
25 two things still on November 2nd. It would have

1 approved or denied. Once they approve or deny they --
2 the mining company would go on. Meanwhile, they would
3 appeal. It really wouldn't be a tolling issue. It
4 would simply be a question of whether the Division is
5 going to be reversed or not unless they move for some
6 sort of stay of the Division's action but that's not a
7 tolling issue. There is either a hearing or there isn't
8 a hearing. The Division makes a decision or doesn't
9 make a decision or does make a decision one way or the
10 other.

11 MS. LEVER: I have a concern that the decision was
12 rendered before there was a hearing on the matter.

13 MR. MITCHELL: Well, in this case, there wasn't --
14 in this case, the decision was made within the -- on the
15 last possible day it could be made. There was no
16 hearing pending, no date for hearing. I mean as of that
17 date -- the date of the 8th, they had asked to be
18 vacated. They were saying as of the date that motion
19 was submitted we're at least 90 days at the minimum for
20 being in any position to put on any kind of evidence in
21 front of you, so within that 120 day period what they're
22 saying is we can't -- we have no basis for put -- we're
23 not in a position to put anything in front of you that
24 would cause you to do something other than renew it.

25 MR. LAURISKI: We'll give you an opportunity.

1 MR. SMITH: Thank you, Mr. Chairman.

2 MR. LAURISKI: I have another question from Board
3 Member Murray.

4 MR. MURRAY: Tom, what you're saying is even though
5 they granted them a hearing date on the 8th, it didn't
6 make a bit of difference on renewing the permit, all the
7 hearing dates, there was no evidence whatsoever in that
8 statement that the Division had to change their opinion
9 on renewing that permit.

10 MR. MITCHELL: Well, I'm saying -- let's keep in
11 mind that we might have different facts, and I don't
12 know what the case would be. I haven't thought through
13 what the case would be had the facts been different than
14 they are today; that is, had the date been set for the
15 8th, these people showed up on the 8th and the permit
16 was renewed on the 2nd. In this case, the date for the
17 8th this was vacated.

18 MR. MURRAY: This is what I'm saying. So renewal of
19 the permit on the 2nd was immaterial to what the 8th
20 meant.

21 MR. MITCHELL: The 8th was gone by the time the 2nd
22 came along.

23 MR. MURRAY: That's what I'm getting after.
24 Regardless of what the 8th meant, it had to be renewed
25 on the 2nd and the Division took the steps they had to

1 take and that was it.

2 MR. MITCHELL: That's the position of the Division.

3 MR. MURRAY: Okay.

4 MR. LAURISKI: Well, I'm going to ask you to turn to
5 the Notice of Informal Conference that was sent out by
6 the Division. Let's go back on the issue of November
7 the 8th. This is a notice that announces an informal
8 conference will be held on November 8th beginning at
9 1:30 p.m. in this Board room. Third paragraph says:
10 Objections to Co-Op Mining Company's five year permit
11 renewal for the Bear Canyon Mine were received in an
12 informal conference to be conducted to accept written or
13 oral statements and any relevant information pertaining
14 to this permit renewal from any party to the
15 conference.

16 Now, as I read that, this hearing was -- as I would
17 read what this says, is to be conducted to accept
18 comments and whether or not to renew Co-Op's permit six
19 days after the 2nd.

20 MR. MITCHELL: The 2nd, that's what it says.

21 MR. LAURISKI: Anything from any other Board
22 members?

23 MR. HANSEN: If I may.

24 MR. LAURISKI: I'm going to allow Mr. Appel and
25 Mr. Smith at this point.

1 MR. APPEL: We're a little bit frustrated by the
2 position of the Division as articulated by
3 Mr. Mitchell. And, as it were, with respect to the
4 tanks, I won't go into that at this point in time, but
5 he seems to be relying on some sort of requirements that
6 the Division make a decision within 120 days. Now maybe
7 Mr. Mitchell can show me where it says that, but what
8 I'm relying upon is the review of the permit application
9 which says that the application review will not exceed
10 120 days and that has a specific tolling provision that
11 we've referenced to you.

12 This -- again, this concept -- well, it's not
13 again. It's the first time. Mr. Mitchell says that our
14 request for postponement means we have no evidence. I
15 don't know how he would know. He certainly never
16 asked. But between the date that that hearing -- if we
17 had been held to the November 8th hearing date, we would
18 have been before them and we would have had something.
19 It's not that hard to show whether or not this
20 particular application is administratively complete and
21 we certainly could have made that shown. No, because we
22 have been -- had not been allowed access to the mine by
23 Co-Op which causes us some additional problems, we
24 wouldn't have been able to have that sort of expert
25 testimony, but I suppose we could have tried to pick it

1 up under the Board's authority.

2 The concept that Mr. Mitchell doesn't know what's in
3 the mind of the Division, I won't even bother with that
4 one. It's his job. But I will say that these
5 particular rules provide for a few things. The statute
6 provides that the expansion of coal mining in Utah --
7 and this is 40-10-1 -- to meet the nation's energy needs
8 makes even more urgent the establishment of the
9 appropriate standards to minimize damage to the
10 environment and the productivity of the soil and to
11 protect the health and safety of the public.

12 In the purpose of that statute 40-10-22, it's
13 required that the chapter assure that the rights of
14 surface landowners and other persons with a legal
15 interest in the land or appurtenances thereto are fully
16 protected from these operations. Subsection three
17 provides assure that surface -- well, that's not going
18 to affect us because it's not surface.

19 Then you turn to the rules that govern the Division,
20 presumably, and this Board and it talks about the
21 objectives of approval or disapproval of permit
22 applications, of permit terms and conditions. One of
23 the objectives and the first one is to provide for broad
24 and effective public participation in the review of
25 applications and the issuance or denial of permits. And

1 I'd ask the Board how that could possibly be met under
2 the theories articulated by Mr. Mitchell. If we're told
3 we're going to have a hearing and we prepare for that
4 hearing, we're told that that hearing is going to be
5 postponed, we're entitled to rely upon that.

6 And, in addition, I'm not sure why he's ignoring
7 Rule 645-300-131.120 which states that the time will be
8 counted as cumulative days of Division review and will
9 not include, will not, not discretionary, will not
10 include operator response time or time delays attributed
11 to informal or formal conferences or Board hearings.

12 The last thing that I'm going to say is that we
13 suggested today that the mining is ongoing. I think a
14 fair reading of this -- well, let me just -- I'll back
15 off of that at this point. A reading of this provision
16 could mean that the ability to mine would continue until
17 these issues are resolved. I don't know that that's a
18 necessary result. We came here suggesting that the
19 mining continue while we get to the bottom of this. We
20 don't want the mining to continue.

21 Every day they do something in that mine is a
22 possibility that they will impact our water resources,
23 but I came here today with the idea of finally getting
24 to the bottom of this and working it out and suggested
25 that. It may be a reading of that rule. I'm not

1 willing to state at this point that it is a mandatory
2 result. So it may be that their right to mine is held
3 in abeyance, but these rules apply and I think that the
4 tolling has occurred and certainly we're entitled to
5 rely upon what the Division told us, this Monday morning
6 quarterbacking aside. Thank you.

7 MR. LAURISKI: Mr. Smith?

8 MR. SMITH: Thank you, Mr. Chairman. I'll just be
9 brief. We asked for a continuance. Nowhere did we ever
10 say we didn't have facts or facts to go forth, that we
11 were out on some sort of fishing expedition to try to
12 develop facts. That's completely false. That's not in
13 our request. Let me read the request again why we asked
14 for a continuance: In order to fully and adequately
15 prepare for the informal conference objecters must,
16 among other things, undertake a thorough review of the
17 DOGM files, the documents produced by Co-Op and their
18 experts or discovery and retain experts for their own
19 purposes.

20 The statements by the Division that we had no facts
21 and we're just hoping to some day go forward with a
22 hearing is completely false. We asked for a continuance
23 so we could be fully prepared. If the Division had said
24 no, you have to go forward on the 8th, we would have
25 gone forward on the 8th with the facts we had, but they

1 didn't say that. We were given a continuance, but now
2 it's under the theory the Division is expanding through
3 their counsel that that hearing on the 8th would have
4 meant nothing because on the 2nd they would have had to
5 grant this permit. This is an "Alice Through the
6 Looking Glass" approach to the rules. We'd ask the
7 Board to interject some common sense and to reject the
8 Division's position because it's contrary to everything
9 that this Board is here for and the Division is here for
10 which is to protect the public.

11 This is to -- completely disallows any kind of
12 public participation by their reading and their
13 interpretation of the rules, and I don't think this
14 should be countenance for one minute. Thank you,
15 Mr. Chairman.

16 MR. LAURISKI: Mr. Hansen?

17 MR. HANSEN: Just very briefly. I heard, I believe
18 it was Mr. Appel -- I don't know if it's Mr. Appel or
19 Mr. Smith -- said that it was fine with them at this
20 point if Co-Op mine continues to mine until these issues
21 are resolved. Co-Op mine can't do that unless their
22 permit is renewed, what we are here on is their
23 objection to renewal and they have stated on the record
24 before the Board this morning that they have no
25 objection to continue the mining while these other

1 issues are resolved. I would just submit that the water
2 users here have chosen the wrong procedural vehicle for
3 the relief that they seek. If they believe that Co-Op
4 mine in the past has engaged in a particular activity
5 that has adversely affected the water supply, they can
6 petition the Division at any time for a notice of
7 violation; if they believe that Co-Op mine is doing
8 something that requires more stringent measures, they
9 can petition the Division to issue a cessation order and
10 to require the mine to stop mining until they correct
11 the problem; they can come back and ask for a suspension
12 of the permit after the problem is sufficiently
13 aggravating or they can petition the Division at any
14 time to require a modification of the permit if the
15 permit itself is not sufficient to protect them, so
16 they're not without their remedy. They've simply chosen
17 the wrong procedural vehicle at which to arrive at the
18 remedy that they seek.

19 MR. LAURISKI: Thank you. Mr. Mitchell, final
20 comments?

21 MR. MITCHELL: This is not a permit application for
22 a new permit to mine. This is a permit renewal. They
23 ain't the same thing. That's why someone has a right of
24 renewal, not a -- you don't have a right to get a permit
25 to mine coal. What you have is an opportunity to get a

1 permit to mine coal if you can demonstrate certain
2 things. You don't have to demonstrate anything to get
3 your right to renewal. You don't have any burden to
4 show anything. You just get it unless somebody else
5 comes forward within a certain period of time and does
6 something.

7 You have to balance the rights of these people and
8 ask yourself what is the Division's authority in terms
9 of messing with it. These people have no due process
10 rights in terms of whether they agree to set this thing
11 off beyond 120 days. There was no -- this wasn't a
12 joint stipulation among all the parties let's continue
13 this thing; although, it's labeled a joint motion to
14 continue the informal conference.

15 And, finally, you have to ask in what way are these
16 people prejudiced. The only way they're prejudiced is
17 they don't have the ability to stop mining without
18 having actually put on any evidence. That's because
19 basically if these people -- if the decision were to be
20 reversed and be told they did not have the ability to
21 reissue that permit, to renew that permit, these people
22 are going to be mining without a permit. They are
23 mining without a permit, people out of business under
24 their right of renewal, and you don't have any -- nobody
25 has any evidence in front of them that justifies that

1 decision.

2 These people, on the other hand, can come in front
3 of the Division any day of the week at any point in time
4 with the evidence and if they have evidence that there
5 is either basis for a cessation order or that the permit
6 should be modified, they can put that on. If they
7 disagree with the Division's decision, they can come in
8 front of the Board and have a formal hearing on that.

9 And that's what you have to balance here.

10 Regardless of whether the decision seems a little
11 flat-footed at times, the real parties in interest are
12 the people whose interests you have to balance; not
13 whether the decision was particularly graceful in all
14 this. It's as between these two parties whose rights
15 are going to be affected within that scheme and who's
16 going to be prejudiced by it within that scheme.

17 (Whereupon a discussion was held off the record.)

18 MR. MITCHELL: Nothing further.

19 MR. LAURISKI: Thank you. One final comment?

20 MR. APPEL: That's really all I need. I need to
21 correct some statements that Mr. Mitchell has made that
22 are rather blanket and deserves reference to the permit
23 renewals section of your rules. Mr. Mitchell said that
24 these folks over here, meaning Co-Op I guess, don't have
25 to do anything to get -- they have the right to renew.

1 I don't read these requirements that way. They have to
2 timely file at least 120 days before expiration which
3 appears to be a nonissue here, the application for
4 renewal has to have a few things included at a minimum:
5 Evidence of liability insurance policy and adequate self
6 insurance, evidence that the performance bond is in
7 effect for the operation and will continue in full
8 force, as well as any additional bond required by the
9 Division. That seems to require a Division
10 determination. A copy of the proposed newspaper notice
11 approved for publication, additional revised or updated
12 information required by the Division. And this one
13 seems fairly important to me, applications for renewal
14 will be subject to the requirements of public
15 notification and public participation contained in other
16 sections of the renewal. Well, that certainly didn't
17 occur. And then there's an approval process, and I
18 guess I won't go through that but this is not
19 pro-forma.

20 The Division can deny this renewal and certainly the
21 public is -- I don't know why we're even talking about
22 this because it's clear that the public is entitled to
23 participate and the public has been denied their
24 opportunity to participate, specifically our clients.
25 They're the ones who filed the objection. The idea that

1 we're not prejudiced because we've been given some sort
2 of other alternative that we admittedly have at any time
3 doesn't cut it with me. We're entitled to participate
4 in this particular proceeding in addition to that and
5 that's what we're talking about here. We're not going
6 to have some sort of a procedure that -- well, they can
7 do something in the future maybe through a citizen suit
8 or something like that when we have the right to
9 participate in the proceeding we're talking about
10 today.

11 So I hope the Board will grant the request that
12 we've made. We're still willing to talk about getting
13 to the bottom line approach, although it appears I
14 should spend some time with Mr. Mitchell beforehand,
15 don't have much faith in getting through today. If you
16 wish us to try to get together and talk about that where
17 the Board retains jurisdiction and we have full
18 discovery on this and get to the bottom of it. We'd be
19 happy to appear before you. Otherwise, we just ask that
20 you remand. Thank you.

21 MR. LAURISKI: Thank you. Anything from the Board
22 for these gentlemen? I think we're going to recess. We
23 will reconvene at 1 o'clock.

24 (Whereupon a recess was taken.)

25 MR. LAURISKI: Okay. We're back on the record. The

1 Board has reached a decision with respect to the request
2 on the last hearing with regard to a remand, the
3 Division on the matter of the five year permit renewal
4 of Co-Op. It's the Board's opinion that the petitioners
5 that asked for the request have presented a case that's
6 persuasive. We believe that under Rule 645-300-131-120
7 that the 120 day time frame did not allow for
8 consideration of the time for informal conference.

9 Further, under Rule 645-300-200-240, we're going to
10 grant temporary leave to Co-Op Mining Company, continue
11 under the existing rule of the original mine permit to
12 continue mining while this matter for informal
13 conference and public participation is handled. So our
14 retroactive order goes to November the 2nd, 1995 so that
15 there's no disruption of activity for Co-Op Mining.

16 I would ask Mr. O'Hara if he would prepare an order
17 for the Board.

18 MR. O'HARA: I will do that.

19 MR. LAURISKI: Thank you.

20 (Concluded at 1:05 pm.)
21
22
23
24
25

1
2 STATE OF UTAH)
3 COUNTY OF SALT LAKE) ss.


4
5 I, DANA MARIE MORSE, a Certified Shorthand Reporter,
6 Registered Professional Reporter, and Notary Public
7 within and for the county of Salt Lake, State of Utah do
8 hereby certify:

9 That the above hearing was taken before me pursuant
10 to notice at the time and place therein set forth.

11 That the testimony and all objections made and all
12 proceedings had at the time of the hearing were recorded
13 stenographically by me and were thereafter transcribed,
14 and I hereby certify that the foregoing transcript is a
15 full, true, and correct record of my stenographic notes
16 so taken;

17 I further certify that I am neither counsel for or
18 related to any party to said action in anywise
19 interested in the outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name this
21 25th day of January 1996.

22
23 
24 DANA MARIE MORSE
25 Certified Shorthand Reporter,
Registered Professional Reporter,
and Notary Public in and for the
County of Salt Lake, State of Utah.

My Commission Expires:
June 13, 1998

